

July 6, 2006

VIA FACSIMILE AND US MAIL

Ms. Eileen A. Donovan, Acting Secretary
Division of Market Oversight
Commodity Futures Trading Commission
One Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: NYMEX Request for Permanent Order Superseding the Commission's
February 4, 2006 Order Extending Interpretation of Eligible Market Participant
pursuant to Section 1a(12)(C) of the Commodity Exchange Act**

Dear Ms. Donovan:

Effective February 4, 2006, the Commission granted the petition of the New York Mercantile Exchange, Inc. ("NYMEX" or the "Exchange") and extended for six months, until August 4, 2006, an order originally granted on February 4, 2003, which allowed a participating NYMEX floor member when acting in a proprietary capacity to be deemed, subject to certain specified conditions¹, an "eligible contract participant" ("ECP") for purposes of trading in OTC energy markets to be cleared on the Exchange ("ECP Order"). The terms of the February 4, 2006 Order included leave by the Exchange to request a further extension of the ECP Order. The Exchange hereby requests a Permanent Order to supersede the existing ECP Order granted to NYMEX effective February 4, 2006, expanding the definition of ECP to include NYMEX floor members under certain stated conditions.

The Chicago Mercantile Exchange ("CME") filed a Petition with the Commission on November 21, 2005, for an Order similar to that of the NYMEX. The CME petitioned to permit floor traders, when acting in a proprietary capacity, to be considered "eligible contract participants" with respect to certain specified over-the-counter ("OTC") transactions in excluded derivative items. In order to qualify, trades by participating traders must be guaranteed by and cleared at the CME by an Exchange Clearing Member registered as a futures commission merchant with the Commission.

The CME requested that the Commission grant their order on a permanent basis. On March 14, 2006, the Commission issued an Order permitting CME floor brokers and floor traders, when trading for their own accounts, to be ECPs for purposes of entering into CME specified over-the-counter (OTC) transactions in excluded commodities which are subsequently submitted to the CME Clearing House for clearance pursuant to CME Rule 5.37. NYMEX's initial ECP Order was granted for a two-year period and extended on February 4, 2005 for a subsequent one-year

¹ The specified conditions, which are enumerated in Section VII of the Commission's ECP Order of February 4, 2006, are attached hereto as Exhibit A.

period. Thereafter, in response to its January 25, 2006 petition, the NYMEX was granted an additional six month extension. In light of the permanent order granted to the CME, the NYMEX requests that it too receive an extension of the February 2006 Order on a permanent basis.

Compliance with the Order Conditions

Section VII of the Commission's ECP Order sets forth certain conditions under which a duly registered NYMEX member, when acting in a proprietary capacity, may be deemed an eligible contract participant and may continue to enter into Exchange-specified OTC contracts, agreements or transactions in an exempt commodity. The provisions contained in NYMEX Rule 6.21G, Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee, satisfy the Commission's conditions enumerated in that section. Similarly, Exchange Rules 9.38, Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee and 9.39, Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members, assure compliance with conditions pertaining to financial guarantees.²

Compliance Market Surveillance Staff has conducted and continues to conduct daily surveillance to insure compliance with all CFTC Eligible Contract Participant requirements. Large Trader Reports are reviewed on a daily basis to insure that all parties to cleared OTC transactions, including floor brokers, are eligible contract participants. If the status of a party is questioned, Staff proceeds to verify their ECP status. If that customer (or floor broker) is not so qualified, Staff immediately notifies the FCM(s) and instructs them that their customer is not an eligible contract participant. Staff maintains a log describing any action taken of this nature. NYMEX also notes that since the program was initiated, the yearly volume of NYMEX ClearPort® Clearing transactions has increased steadily without any findings of abusive trading activity.³

Experiences under the Order

The Commission has requested that this extension request include a report reviewing the ongoing experiences of the Exchange and its floor members and clearing members since the last report was made.

By Notice to Members dated February 6, 2006 (Notice No.75), NYMEX Members were notified that the Commission had granted a six month extension to the Order and were reminded of the conditions contained in the Order. From January 1 through May 31, 2006, thirty-two (32) NYMEX floor members, who do not otherwise qualify as an ECP were registered in the program. Fourteen (14) are guaranteed by clearing member Man Financial, Inc., ten (10) are guaranteed by F.C. Stone, five (5) by MBF Clearing Corp., two (2) by Rosenthal Collins Group and one (1) by ABN-AMRO Incorporated. However, of the 32 floor member registrants, 23 participated in cleared transactions. (During the calendar year 2005, only fifteen such NYMEX floor members were registered in the program and of those registrants, ten (10) participated in

² Copies of the above-mentioned Rules are attached hereto as Exhibit B.

³ The NYMEX ClearPort® Clearing volume for 2002 was 534,311; in 2003, 6,039,805; in 2004, 14,454,748; and in 2005, 35,229,786. The volume for 2006 through May 31 is 24,372,097.

cleared transactions.) By comparison, Compliance Department oversight of floor members engaging in EFS transactions has identified seventeen (17) floor members who have engaged in EFS transactions on the basis of their outright qualification as ECPs. (During the calendar year 2005, ten (10) floor members with outright ECP qualifications engaged in EFS transactions.)

In order to give the Commission and Commission staff a more complete picture of the level of activity of the 23 Floor Members actively participating in this program, Compliance staff tallied their EFS transaction activity from January 1 through May 31, 2006. These data indicate that, during this period, these Floor Members participated in cleared transactions constituting a total of 1,002,027 contracts, or 4.1% of the total number of NYMEX ClearPort® transactions cleared during the target period.⁴ In general, this EFS activity was largely concentrated in EFS transactions in the smaller cash-settled natural gas or natural gas basis futures contracts that are listed in the NYMEX ClearPort® Clearing system.

As noted in our previous request for an extension, light participation by NYMEX Floor Members continues. The lack of participation in this program might perhaps be due in part to noticeable price volatility in NYMEX's core floor-traded products which provided ample trading opportunities on the Exchange's trading floors in futures trading and thus have made it less necessary for professional futures traders to look to OTC markets for other trading opportunities. Also, at the present time, the Exchange permits EFS transactions in the Natural Gas futures contract, but not for the Light, Sweet Crude Oil futures⁵ or for the New York Harbor Unleaded Regular Gasoline or New York Harbor No. 2 Heating Oil futures contracts. Thus, this program appears to be of most interest to floor members who already are regularly trading the Natural Gas futures contract.

In addition, a good number of floor traders focus upon trading in the front month or the first few listed months of a contract (such as by putting on spreads between these contract months) whereas the OTC natural gas market seems to put greater emphasis upon trading in longer periods, such as calendar strips or quarterly or seasonal strip trading. One consequence of this difference in trading approaches is that a floor trader actively engaging in OTC natural gas trading likely would need to retain an additional clerk to provide active position management for that trader's OTC transactional activity.

At present, there are two clearing member firms, Man Financial L.L.C.; and F.C. Stone, L.L.C., who provide clearing services to the vast majority of eligible program participants. Additionally, a third clearing member firm, MBF Clearing Corp., has increased its capital above the minimum \$20 million working capital requirement level in effect pursuant to the ECP Order for the sole purpose of allowing its local clearing customers the opportunity to engage in ClearPort® Clearing business.⁶

⁴ Participation by one floor member constituted 635,421 of those transactions.

⁵ The NYMEX Board of Directors has recently approved in principle but not yet implemented the clearing of EFS transactions in Light Sweet Crude Oil Futures.

⁶ These three Clearing Members specialize in clearing the trades of NYMEX floor members, which accounts for their level of involvement with this program.

By comparison, with regard to overall activity for NYMEX ClearPort® Clearing services, on January 9, 2006, the Exchange issued a press release announcing that, on the previous business day, January 6, 2006, the NYMEX ClearPort® clearing volume had traded a record 300,138 contracts, which was a new one-day record at the Exchange for the clearing of off-Exchange transactions. The press release noted that the previous record had been set on September 29, 2005, when 286,146 contracts were cleared. On January 26, 2006, the Exchange announced a new one-day record volume of 371,369 contracts cleared by NYMEX ClearPort® clearing. For the calendar year 2005, the total volume for NYMEX ClearPort® cleared transactions was 35,229,786 contracts. During the target period, from January 1 through May 31, 2006, the volume for such cleared transactions totaled 24,372,097. Consequently, when viewed in the context of overall activity for the Exchange's clearing services for transactions executed on NYMEX ClearPort®, the contribution made by Floor Members participating in this program continues to be relatively modest.

In view of the continued specified conditions under which participation by qualified floor members is permitted, as well as the appropriate compliance and financial safeguards in place to monitor participation in OTC cleared transactions by these participants, NYMEX respectfully seeks a Permanent Order allowing participating NYMEX floor members, when acting in a proprietary capacity to be deemed, subject to certain specified conditions, an ECP for the purposes of trading in OTC energy markets to be cleared on the Exchange.

The Exchange thanks the Commission for its consideration of this request. If there are any questions, please do not hesitate to contact Nancy Minett, Vice President, Compliance, at (212) 299-2940.

Very truly yours,

Thomas F. LaSala
Senior Vice President
Compliance and Risk Management

cc: Duane Andresen
Donald Heitman
Nancy Minett
Brian Regan
Adam Wernow
Lois Shapiro

Exhibit A

VII. Order

Upon due consideration, and pursuant to its authority under section 1a(12)(C) of the Act, the Commission hereby determines that a NYMEX member who is registered with the Commission as a floor broker or a floor trader, when acting in a proprietary trading capacity, shall continue to be deemed to be an eligible contract participant and may continue to enter into Exchange-specified OTC contracts, agreements or transactions in an exempt commodity under the following conditions:

1. This Order is effective for six months, commencing on February 4, 2006.
2. The contracts, agreements or transactions must be executed pursuant to section 2(h)(1) of the Act.
3. The floor broker or floor trader must have obtained a financial guarantee for the contracts, agreements or transactions from a NYMEX clearing member that:
 - (a) Is registered with the Commission as an FCM; and,
 - (b) Clears the OTC contracts, agreements or transactions thus guaranteed.
4. Permissible contracts, agreements or transactions must be limited to trading in a commodity that either:
 - (a) Is listed only for clearing at NYMEX,
 - (b) Is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, or
 - (c) Is listed only for clearing at NYMEX and NYMEX's rules provide for exchanges of options for options in that contract, and each OTC contract, agreement or transaction executed pursuant to the order must be cleared at NYMEX.
5. The floor broker or floor trader may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for contracts that are listed for trading on the Exchange.
6. NYMEX must have appropriate compliance systems in place to monitor the OTC contracts, agreements or transactions of its floor brokers and floor traders.
7. Clearing members that guarantee and clear OTC contracts, agreements or transactions pursuant to this order must have and maintain at all times minimum working capital of at least \$20 million. A clearing member must compute its working capital in accordance with exchange rules and generally accepted accounting principles consistently applied.
8. In the event NYMEX requests a further modification or extension of the ECP Order, the request shall include a report to the Commission reviewing the experiences of the Exchange and its floor members and clearing members under the Order. The report shall include information on the levels of OTC trading and related clearing activity, the number of floor members and clearing members participating in the activity, and the Exchange's reasons supporting the further modification or extension of the Order.

This order is based upon the representations made and supporting material provided to the Commission by NYMEX. Any material changes or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the provisions set forth herein are appropriate. Further, if experience demonstrates that the continued effectiveness of this order would be contrary to the public interest, the Commission may condition, modify, suspend, terminate or otherwise restrict the provisions of this order, as appropriate, on its own motion.

Exhibit B**NYMEX Rule 6.21G, Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee**

(A) This program is effective until August 4, 2006, or until such other date as announced by the Exchange. The over-the-counter (OTC) contracts, agreements or transactions must be executed pursuant to Section 2(h)(1) of the Commodity Exchange Act (Act), which in effect provides among other things that such transactions shall be subject to CFTC anti-fraud and anti-manipulation authority and also may not be entered into on a trading facility. This program generally allows a NYMEX Floor Member to enter into trading in certain OTC contracts on the basis of a FCM guarantee without needing to satisfy the total assets requirements otherwise necessary under the Act for such trading. In order to maintain eligibility for this program, a NYMEX Floor Member must continue to satisfy all of the conditions contained in this rule.

(B) This program is available only to NYMEX Floor Members in good standing who are properly registered with the CFTC as a floor trader and/or as a floor broker. With respect to floor brokers, this program is available only for trading executed by the floor broker for his proprietary account. In addition, each NYMEX Floor Member must notify the Exchange Compliance Department prior to any participation in this program.

(C) Clearing. The NYMEX Floor Member must have obtained and at all times maintain a financial guarantee in writing as provided by the Exchange for the contracts, agreements or transactions from a NYMEX Clearing Member that:

(1) is registered with the Commission as an FCM; and, (2) clears the OTC contracts, agreements or transactions thus guaranteed for such NYMEX Floor Member.

(D) Permissible OTC contracts, agreements or transactions shall be limited to trading in a commodity that either: (1) is listed only for clearing at NYMEX or (2) is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and (3) each OTC contract, agreement or transaction executed pursuant to this NYMEX program must be cleared at NYMEX.

(E) The NYMEX Floor Member may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for any contract that is listed for trading on the Exchange. However, a NYMEX Floor Member may enter into OTC contracts, agreements or transactions for such products with another individual or entity that qualifies as an "eligible contract participant" pursuant to the Act.

(F) All contracts transacted in connection with this rule must be submitted and accepted for clearing on the Exchange. This rule neither authorizes nor allows a NYMEX Floor Member to maintain an uncleared OTC position and such activity would constitute a violation of this rule.

NYMEX Rule 9.38, Participation by NYMEX Floor Members in Special Program for Over-the-Counter Trading with FCM Guarantee

(A) This program is effective until February 4, 2005, or until such other date as announced by the Exchange. The over-the-counter (OTC) contracts, agreements or transactions must be executed pursuant to Section 2(h)(1) of the Commodity Exchange Act (Act), which in effect provides among other things that such transactions shall be subject to CFTC anti-fraud and anti-manipulation authority and also may not be entered into on a trading facility. This program generally allows a NYMEX Floor Member to enter into trading in certain OTC contracts on the basis of a FCM guarantee without needing to satisfy the total assets requirements otherwise necessary under the Act for such trading. In order to maintain eligibility for

this program, a NYMEX Floor Member must continue to satisfy all of the conditions contained in this rule.

(B) This program is available only to NYMEX Floor Members in good standing who are properly registered with the CFTC as a floor trader and/or as a floor broker. With respect to floor brokers, this program is available only for trading executed by the floor broker for his proprietary account. In addition, each NYMEX Floor Member must notify the Exchange Compliance Department prior to any participation in this program.

(C) Clearing. The NYMEX Floor Member must have obtained and at all times maintain a financial guarantee in writing as provided by the Exchange for the contracts, agreements or transactions from a NYMEX Clearing Member that:

(1) is registered with the Commission as an FCM; and,

(2) clears the OTC contracts, agreements or transactions thus guaranteed for such NYMEX Floor Member.

(D) Permissible OTC contracts, agreements or transactions shall be limited to trading in a commodity that either: (1) is listed only for clearing at NYMEX or

(2) is listed for trading and clearing at NYMEX and NYMEX's rules provide for exchanges of futures for swaps in that contract, and

(3) each OTC contract, agreement or transaction executed pursuant to this NYMEX program must be cleared at NYMEX.

(E) The NYMEX Floor Member may not enter into OTC contracts, agreements or transactions with another floor broker or floor trader as the counterparty for any contract that is listed for trading on the Exchange. However, a NYMEX Floor Member may enter into OTC contracts, agreements or transactions for such products with the Exchange in connection with options or forwards entered into through a pari-mutuel auction or, in connection with other OTC contracts, agreements or transactions, with an individual or entity that qualifies as an eligible contract participant" pursuant to the Act.

(F) All contracts transacted in connection with this rule must be submitted and accepted for clearing on the Exchange. This rule neither authorizes nor allows a NYMEX Floor Member to maintain an uncleared OTC position and such activity would constitute a violation of this rule.

9.39 Special Capital Provisions for Clearing Members Guaranteeing and Clearing OTC Contracts Executed by NYMEX Floor Members

(A) Clearing Members that guarantee and clear OTC contracts, agreements or transactions pursuant to the program referenced in NYMEX Rule 9.38 must have and maintain at all times minimum working capital of at least \$20 million; provided, however, that during the first 18 months following commencement of this program, a Clearing Member must have and maintain minimum working capital of at least:

a) \$5 million during the first twelve months of the two-year period; and

b) \$10 million during the thirteenth through eighteenth months of the two-year period.

(B) If, during the 18-month period, a Clearing Member does not maintain working capital of at least \$20 million, it must further reduce its working capital in compliance with this program by 100 percent of the NYMEX margin requirements for the OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. A Clearing Member must compute its working capital in accordance with Exchange rules and generally accepted accounting principles consistently applied.

(C) A Clearing Member that is subject to the provisions of paragraph (B), above shall be required to compute, on a daily basis, the total margin requirement for OTC contracts, agreements or transactions of floor brokers and floor traders that it is guaranteeing pursuant to this program. Such computations must be documented and maintained by the Clearing Member in accordance with CFTC Regulation 1.31 and be made available for inspection by Exchange representatives. Computations prepared as of financial statement filing dates must be included as part of such filing with the Exchange.

(D) A decline in a Clearing Member's working capital resulting from the application of this Rule shall be subject to the reporting requirements set forth in Rule 9.22.

Clearing Rules Specifically Governing Clearing Member Obligations Regarding Clearing of Options and Forwards Executed in Exchange-Designated Pari-mutuel Auctions

Note: The following subsection is intended to group together several rules that apply specifically to obligations associated with the clearing of this category of product. Clearing Members are advised that, in addition to other Chapter 9 rules that govern their duties more generally, they may wish to also consult the following Chapter 9 rules:

Rule 9.00(D);
Rule 9.04(l);
Rule 9.05H); and
Rule 9.23